



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION
Case #: FOP - 175649

PRELIMINARY RECITALS

Pursuant to a petition filed on July 19, 2016, under Wis. Admin. Code §HA 3.03, to review a decision by the Lafayette County Department of Human Services regarding FoodShare benefits (FS), a hearing was held on September 27, 2016, by telephone.

The issue for determination is whether the agency erred in determining petitioner's liability for an \$1,128 FS overpayment.

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By:

Lafayette County Department of Human Services
627 Main Street
Darlington, WI 53530

ADMINISTRATIVE LAW JUDGE:

John P. Tedesco
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Lafayette County.

2. In *In the Matter of* [REDACTED] [REDACTED], Case No. FOO-169529, ALJ Brian Schneider held a hearing on November 12, 2015. The request for hearing had been filed on October 20, 2015. The ALJ determined that petitioner's wife had begun receiving FS on 8/28/15 after alleging that petitioner did not live with her. Following the hearing in that matter, ALJ Schneider found that the evidence supported the agency's conclusion that the [REDACTED] [REDACTED] was still living in the residence with his wife/ex-wife and their son and that with his income added to the household the agency correctly terminated the FS. The decision concluded that petitioner was correctly included in the FS case due to relationship and residence. That decision was issued on November 16, 2015. Benefits had been continued during the pendency of that appeal and ALJ Schneider specifically stated that any benefits "issued under the continued benefits order are considered overpaid."
3. The agency determined a FS overpayment on the case and issued a notice to petitioner on 7/13/16 indicating his liability for a FS overpayment in the amount of \$1,128 for the period from 8/27/15 to 10/31/15.
4. Petitioner appealed.

DISCUSSION

Biological, adoptive and step parents and their children under the age of 22 must be included in the same household for FS purposes when they live together. *FSH*, §3.3.1.3; also see 7 *Code of Federal Regulations (CFR)*, §273.1(b)(1).

All adult members of the household are liable for an overpayment:

All adult [a person who is 18 years old or older] or emancipated minor [A married, widowed or divorced person who is at least 16 years old, a minor who has given birth, a minor emancipated by court order, a minor emancipated by parental consent or a minor living on his or her own who is not supported by parents] food unit members at the time the overpayment occurred are liable for repayment of any overissued FoodShare benefits. If a liable individual moves to another household, the claim follows him/her to the new household. Also apply the claim to any remaining adult or emancipated minor food unit members. An individual living in the household, but not included in the food unit would not be responsible or liable for the overissuance to the food unit.

FoodShare Eligibility Handbook, Appendix 7.3.1.2; see also 7 *C.F.R.* §273.18(a)(4).

This matter involved the benefits paid on the FS during the pendency of the appeal in the matter of [REDACTED] [REDACTED]. ALJ Schneider determined that petitioner was a resident in the home. This appeal was petitioner's opportunity to persuade me that he was, in fact, not a resident or should not be liable for some other reason.

At the time of hearing, petitioner stated that he does not know why he would be responsible for this overpayment after he left the home. This ALJ inquired when he left the home and petitioner was unsure of the specific date. When asked to provide even rough dates petitioner avoided the question and refused to even provide an estimate. He explained that he went to live with a friend in [REDACTED] IA but could not estimate when that happened. He explained that he returned to WI after he received his relocation package but stated he had "no clue" when that occurred. I note that this matter was rescheduled at petitioner's request to provide him time to prepare for the hearing as he was not ready at the first scheduled date.

In sum, petitioner did not provide any material evidence supporting a claim that he did not live in the home during the overpayment period.

CONCLUSIONS OF LAW

The agency did not err in finding petitioner liable for the FS overpayment of

THEREFORE, it is

ORDERED

That this matter is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 13th day of October, 2016

\s _____
John P. Tedesco
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on October 13, 2016.

Lafayette County Department of Human Services
Public Assistance Collection Unit
Division of Health Care Access and Accountability